

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

NANCEE SCHUMACHER,)	
)	
Plaintiff,)	Cause No.
)	Missouri Circuit Court
vs.)	Twenty First Judicial Circuit
)	(St. Charles County)
DILLARD’S INC.)	Case No.: 2011—CC01177
)	
Defendant.)	JURY TRIAL DEMANDED

NOTICE OF REMOVAL

Defendant DILLARD’S INC. (“Dillard’s”), by and through its undersigned counsel, pursuant to 28 U.S.C. §§ 1441 and 1446, hereby removes this case from the Circuit Court of St. Charles County, State of Missouri, to the United States District Court for the Eastern District of Missouri, on the following grounds:

BACKGROUND

1. Plaintiff, Nancee Schumacher, brought this lawsuit against Defendant Dillard’s in an action styled *Nancee Schumacher v. Dillard’s Inc.*, Case Number 2011—CC01177, in the Circuit Court of St. Charles County, State of Missouri. Plaintiff filed her action on December 15, 2020 (a copy of the complete State Court file is attached hereto as Attachment 1).

2. Dillard’s was served with the state court Petition on December 18, 2020. (See Attachment 1).

3. The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different States. 28 U.S.C.A. §1332(a)(1).

CITIZENSHIP OF PARTIES

4. Plaintiff is a citizen of the State of Missouri. (Attachment 1, Petition)

5. Defendant Dillard's, Inc. is a foreign corporation, having been incorporated in Delaware with its principal place of business in Arkansas.

AMOUNT IN CONTROVERSY

6. In determining where the “matter in controversy exceeds the sum or value of \$75,000 . . .” this Court isn't limited to the four corners of the state court petition but is permitted to consider “other paper”. 28 U.S.C.A. §§1332 and 1446(b)(3).

7. A settlement or demand letter is considered a “other paper” to “show that the amount in controversy exceeds \$75,000” Tornabene v. Target Corporation, 2008 WL 11381586 (U.S.D.C. D N.J. 2008).

8. On July 22, 2019, Plaintiff, through counsel, mailed a “Time Limited Demand” letter to Defendant, attached hereto as Attachment 2. In the letter, Plaintiff alleges a “dorsal talar avulsion fracture, avulsion fracture of right ankle, . . . bursitis of the left elbow, . . . and left partial rotator cuff tear.” Attachment 2, p. 7. Plaintiff alleged over \$51,000 in medical expenses to-date for repair of the fractures and possible future medical expenses in excess of \$27,000 for surgical repair of the rotator cuff tear. Plaintiff demanded \$400,000 to settle Plaintiff's claim against Defendant. Attachment, p. 7.

9. To meet its burden with regard to the jurisdictional amount, the removing party “must show that it appears to a ‘legal certainty’ that the amount in controversy exceeds \$75,000.” *Gramc v. Millar Elevator Co.*, 3 F.Supp.2d 1082, 1084 (E.D. Mo. 1998) (citing *Corlew v. Denny's Restaurant, Inc.*, 983 F.Supp. 878, 879 (E.D. Mo. 1997)).

10. Given Plaintiff's alleged injuries, past and potential future medical treatment, and medical expenses incurred, it appears "to a legal certainty" that the amount in controversy exceeds the jurisdictional amount of \$75,000. *Id.*

THE PREREQUISITES FOR REMOVAL ARE SATISFIED

11. Under 28 U.S.C. § 1446(b), "[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading."

12. Thirty days from the initial date of service of Dillard's is January 17, 2021.

13. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), as the amount in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between citizens of different states.

14. Because this Court has jurisdiction over this matter and because defendant is not a citizen of Missouri, the action may be removed to this Court pursuant to 28 U.S.C. § 1441(a).

15. A copy of all process, pleadings, orders and other documents currently on file in the state court as of January 7, 2021 are attached hereto as Attachment 1.

16. A Notice of Filing Notice of Removal is being filed with the state court and served on Plaintiff's counsel.

WHEREFORE, Defendant Dillard's, Inc. respectfully requests removal of Case Number 2011—CC01177, in the Circuit Court of St. Charles County, State of Missouri, to this Court, that this Court accept jurisdiction of this action and that this action be placed upon the docket of this Court for further proceedings as though this action has originally been instituted in this Court.

WITZEL, KANZLER & DIMMITT LLC

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January, 2021, Defendant's Notice of Removal was served upon counsel for Plaintiff by mailing same, first-class prepaid postage, to:

Gene S. Hou
Robert E. Wann
1444 Gravois Road
High Ridge, MO 63049
Attorney for Plaintiff

/s/ David A. Dimmitt